

² The Board notes that, following the February 15, 2017 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is unable to review this evidence for the first time on appeal. See 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-0176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On March 25, 2016 appellant, then a 60-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained contusions to the bridge of her nose and forehead when a cabinet door slid down and hit her on the head while she was opening the cabinet. She continued working full duty following the injury, but stopped work on April 8, 2016. Appellant returned to work for four hours per day on April 13, 2016.

On March 30, 2016 appellant was seen by Dr. Francis Stagg, a treating Board-certified occupational medicine physician, for her March 25, 2016 injury. Dr. Stagg diagnosed head and nasal contusions and indicated that she was capable of full-duty work.

In an April 8, 2016 work status work sheet, Dr. Richard Klassen, a treating physician Board-certified in occupational medicine, indicated that appellant was disabled from work, but could return to work on April 13, 2016. On April 13, 2016 he indicated that appellant was capable of working four hours per day with restrictions for the period April 14 to 20, 2016. Appellant continued to work part time based on Dr. Klassen's opinion and restrictions.

On April 22, 2016 OWCP accepted the claim for head and nose contusions, and subsequently expanded acceptance of the claim to include postconcussive syndrome. Appellant received wage-loss compensation on the supplemental rolls from May 16 to October 25, 2016.

On April 26, 2016 appellant accepted a light-duty position for four hours of work per day.

In reports dated April 26 and May 13, 2016, Dr. William B. Lujan, a treating Board-certified neurologist, described how the work injury occurred and noted the medical treatment appellant had received. He performed a neurological examination and diagnosed postconcussion syndrome, without loss of consciousness. Dr. Lujan reported that appellant was slowly improving and opined that she would eventually have full recovery from her symptoms. He indicated that appellant was capable of working four hours per day, which would be increased to six hours per day.

On May 18, 2016 appellant accepted a modified job offer working six hours per day based on Dr. Lujan's restrictions.

In a report dated June 22, 2016, Dr. Lujan provided a history of injury, reviewed diagnostic tests, and performed a neurological examination. Appellant's diagnoses were related as cervical ligament sprain, postconcussion syndrome without loss of consciousness. Dr. Lujan concluded that appellant sustained a mild concussion and recommended that she continue working six hours per day. He indicated that he anticipated appellant's full recovery from her injury.

On July 21, 2016 OWCP referred appellant to Dr. Scott C. Forrer, a Board-certified neurologist, for a second opinion evaluation to determine the status of her accepted injury and whether she had physical limitations due to the accepted work injury.

On July 22, 2016 appellant accepted a light-duty position for six hours work per day.

On August 4, 2016 appellant was seen by Dr. Lujan for a follow-up evaluation of her head injury. Dr. Lujan increased her work hours to eight per day and noted that she continued to require time off for medical appointments and therapy sessions.

On August 11, 2016 appellant accepted a light-duty job offer from the employing establishment to work eight hours per day.

In an August 16, 2016 report, Dr. Lujan reported that appellant had work restrictions due to her accepted conditions which necessitated a break of 5 to 10 minutes from computer work, every one and one-half to two hours. He also related that appellant found working eight hours per day stressful.

In a report dated September 13, 2016, Dr. Forrer, based upon a review of the medical evidence, statement of accepted facts, and physical and neurological examination, diagnosed postconcussive syndrome and postconcussive neurologic phenomena. He explained that diagnosis of postconcussive syndrome was supported by appellant's complaints of post-traumatic headaches with cervicogenic or muscle tension/contraction features, as well as pain at the base of skull extending downward into appellant's mid neck and headaches following the injury; however, these symptoms were currently less frequent. Dr. Forrer reviewed a March 29, 2016 computer tomography scan of appellant's head, which he noted was unremarkable. Appellant related that she had no difficulty performing her work duties, her neck pain had become minimal, and she no longer had frequent headache events. Examination findings included intact comprehension, normal cervical nerves II to XII, normal sensory testing, cerebellar function, and motor strength, normal gait, no lower cervical paraspinous musculature, bilateral tenderness in upper-to-mid cervical paraspinous musculature, and no tenderness in the thoracic or lumbar paraspinous musculature or trapezius. Dr. Forrer found no objective findings supporting disability although there were subjective complaints of headache and neck pain. He noted that appellant was currently performing her job as a social worker full time without restrictions. Next, Dr. Forrer explained that appellant's subjective complaints of neck pain and headache were residuals of the accepted March 25, 2016 work injury, which he opined would resolve in six to eight weeks.

Dr. Lujan, in reports dated September 15 and October 25, 2016, reiterated examination and history finding from his prior reports. The diagnoses due to the accepted March 25, 2016 work injury continued to be concussion, cervical strain, and postconcussion syndrome. Dr. Lujan noted that appellant sustained a mild head injury, which he opined likely caused a mild concussion and postconcussion syndrome as well as a mild cervical strain/whiplash. He reported improved cognition and that appellant was currently working eight hours per day, but with time off for medical appointments and physical therapy.

On November 22, 2016 OWCP forwarded a copy of Dr. Forrer's report to Dr. Lujan for review and opinion as to whether he agreed or disagreed with Dr. Forrer's opinion.

In a December 14, 2016 letter, Dr. Lujan responded to and disagreed with Dr. Forrer's conclusion that appellant was at maximum medical improvement and no longer had any residuals from her accepted March 25, 2016 work injury. Based on his October 25, 2016 examination, Dr. Lujan opined that appellant continued to have residuals in the form of intermittent dizziness with head movement, neck and upper thoracic pain, and intermittent

headaches. While he was of the opinion that appellant would make a full recovery in time, he would reevaluate whether appellant had reached maximum medical improvement at her next appointment on January 3, 2017.

Dr. Lujan, in a progress note dated January 3, 2017, concluded that appellant currently was at maximum medical improvement and that her case could be closed. He recommended supportive care of one to two neurological follow-up visits and cervical and thoracic physical therapy, as needed.

On January 11, 2017 OWCP issued a notice proposing to terminate appellant's compensation benefits. It found that the reports from Drs. Forrer and Lujan established that appellant no longer had any residuals or disability due to the accepted head and nose contusions and postconcussive syndrome.

By correspondence dated January 26, 2017, appellant noted her disagreement with the proposal to terminate her compensation benefits. She noted that Dr. Lujan opined that her work case be closed, but indicated she required continued supportive care on an as needed basis.

By decision dated February 15, 2017, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective February 15, 2017. It found the medical evidence of record established that appellant no longer had any residuals or disability due to her accepted head and nose contusions and postconcussive syndrome. OWCP noted that Dr. Forrer, an OWCP referral physician, concluded that appellant no longer had any residuals or disability due to the accepted work injury and that on January 3, 2017 Dr. Lujan, a treating physician, found that appellant had reached maximum medical improvement and her case should be closed. With respect to Dr. Lujan recommending supportive care, it found this concerned future medical care was prophylactic, in nature, and not compensable under FECA.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, OWCP must

³ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁵ *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁶ *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁷

ANALYSIS

OWCP accepted that appellant sustained head and nose contusions, and postconcussive syndrome as a result of the accepted March 25, 2016 work injury. Based on the opinion of Drs. Forrer and Lujan, OWCP terminated her compensation benefits effective February 15, 2017 as it found she no longer had any residuals or disability due to the accepted March 25, 2016 work injury. It found Dr. Forrer's opinion constituted the weight of the medical opinion evidence. OWCP also noted that while Dr. Lujan, in a January 3, 2017 report, opined that appellant's case could be closed, his recommendation for supportive care was based on a possible future reinjury or injury.

The Board finds that OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as the opinions of Dr. Forrer and Dr. Lujan establish that she had no further disability or residuals due to her accepted employment injury.

Initially, the Board notes that the evidence of record includes reports from Dr. Stag and Dr. Klassen, who treated appellant shortly following her March 25, 2016 employment injury. However, as these physicians did not further evaluate appellant to determine the status of her accepted conditions, their reports from March and April 2016 are of diminished probative value relative to the issue of the termination of appellant's compensation benefits.⁸

The August 26, 2015 report of Dr. Forrer reflected a second opinion evaluation to determine whether appellant had any continued disability or residuals due to her accepted March 25, 2016 work injury. Dr. Forrer detailed the history of headache and pain complaints, noted that she was working full time, and that her symptoms of pain and headache had subsided. On examination he found normal cervical nerves, normal sensory testing, no thoracic, lumbar, or lower cervical paraspinous musculature tenderness, and bilateral tenderness in the upper-to-mid cervical paraspinous musculature. Dr. Forrer opined that there were no objective findings showing residuals of the accepted conditions, but there were subjective pain and headache complaints. He concluded that the pain and headache complaints were residuals of the accepted March 25, 2016 work injury and would resolve in six to eight weeks. Dr. Forrer further noted that appellant was currently performing her usual job as a social worker full time and without restrictions. He based his opinion on a complete factual and medical background and provided detailed findings on examination. Dr. Forrer reached medical conclusions regarding appellant's condition which was supported by his findings.⁹ The Board, therefore, finds that Dr. Forrer's opinion is sufficient to justify termination of appellant's compensation.

On January 3, 2017 Dr. Lujan determined that appellant's case could be closed as she had reached maximum medical improvement. The Board has found that to terminate compensation

⁷ *Kathryn E. Demarsh, id.; James F. Weikel*, 54 ECAB 660 (2003).

⁸ *See O.L.*, Docket No. 10-0924 (issued February 24, 2011).

⁹ *M.R.*, Docket No. 14-1405 (issued December 22, 2015); *Pamela K. Guesford*, 53 ECAB 727 (2002).

benefits, OWCP may properly rely on medical evidence from appellant's own treating physician which establishes that the accepted conditions have resolved.¹⁰ As appellant's attending physician, Dr. Lujan, had a thorough knowledge of appellant's condition, his opinion is probative on the issue of whether appellant had any further disability due to her accepted employment injury. With respect to Dr. Lujan's recommendation for supportive care on an as needed basis, the Board finds that this concern for a possible future injury or reinjury, which is not compensable under FECA.¹¹ The Board, therefore, finds that OWCP properly relied upon both Dr. Lujan and Dr. Forrer in terminating appellant's compensation benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective February 15, 2017.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 15, 2017 is affirmed.

Issued: December 13, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *G.G.*, Docket No. 17-0537 (issued July 20, 2017).

¹¹ *I.J.*, 59 ECAB 408 (2008).